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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of)
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Closed Captioning and Video Description)
of Video Programming)
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MM Docket No. 95-176

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

PETITION FOR RECONSIDERATION OF THE ASSOCIATION OF
AMERICA'S PUBLIC TELEVISION STATIONS

The Association of America's Public Television Stations ("APTS") submits its Petition for Reconsideration of the Commission's Report and Order adopted August 7, 1997, in the above-captioned proceeding ("Order"). The Commission's Order adopts rules implementing the closed captioning requirements set forth in Section 713 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"). APTS has participated throughout this proceeding and filed comments in response to both the Commission's Notice of Inquiry and subsequent Notice of Proposed Rulemaking.¹

¹ Notice of Inquiry, MM Docket No. 95-176, FCC 95-484, 11 FCC Rcd 4912 (1996); Report, MM Docket No. 95-176, FCC 96-318 (released July 29, 1996), summarized at 61 Fed. Reg. 42249 (August 14, 1996); Notice of Proposed Rulemaking, MM Docket No. 95-176, 12 FCC Rcd 1044 (1997).

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Introduction

APTS is a nonprofit organization whose membership includes nearly all of the nation's 179 public television licensees. APTS engages in planning and research activities on behalf of its members, as well as representing them in legislative and policy matters before the Commission, Congress, and the Executive Branch.

As public television's mission is to provide educational, informational and cultural programming and related services to the unserved and underserved of our nation, public broadcasting stations are committed to making their programming accessible to all audiences. As made clear in APTS's comments and the FCC's Order in this proceeding, public television has taken a leadership role in making its programming accessible to hearing impaired persons. However, given the limited operating budgets of most public television stations and the significant costs involved in closed captioning, lack of financial resources is often a barrier to public television stations' realizing their commitment to making their programming accessible to all audiences.

APTS supports the Commission's adopted captioning rules, including the transition periods for captioning new and library programming. Further, APTS supports the adopted exemptions of classes of programming under the economic burden standard. However, APTS petitions the Commission for reconsideration of one aspect of its decision on exempt programming. We

request that the Commission exempt from captioning requirements instructional ("ITV") programming offered by public television stations to elementary, secondary, and post-secondary schools.

A large percentage of the instructional materials broadcast by public television stations on their over-the-air channels are currently captioned. Nearly 100 percent of the PBS Ready-to-Learn and other K-12 instructional programming is captioned. Approximately two-thirds of the PBS Adult Learning Services programming is currently captioned, and the remaining amount is expected to be captioned over the next few years. The concern lies with instructional programming not offered by PBS that is carried by the stations on their over-the-air channels for K-12 school use and for post-secondary school course credit. Such programming is often produced by public television station university or college licensees or by consortia of public television educational licensees for use on a local or regional basis.

As the Commission recognized in its Notice of Proposed Rulemaking (§ 76), production of local instructional programming is typically done with very small production budgets. The Commission recognized, "Thus, a captioning requirement may be economically burdensome to the program's providers or owners and might result in the loss of such programming" (*Id.*). However, in its Order, the Commission declined to exempt instructional programming from its closed captioning requirements, although it did exempt ITFS programming. The only justification the Commission gave for this disparate treatment of similar, if not identical, programming was that: "With respect to other local instructional programming, we believe that our

general exemption for local programming or our general revenue exemption will encompass cases where closed captioning is an economic burden" (Order, ¶ 159).

APTS requests that instructional programming broadcast by public television stations be exempt for the very reasons that the Commission decided to exempt ITFS programming. With respect to ITFS programming, the Commission found, "This programming is intended for specific receive sites and not for general distribution to residential television viewers" (*Id.*). The Commission further reasoned, "To the extent that persons with hearing disabilities are the intended recipients of this programming, we conclude that other laws require that accommodations be made to make this instructional programming accessible" (*Id.*).

APTS submits that this reasoning applies equally to ITV programming broadcast by public television stations for use in schools (i.e. instructional programming specifically designed for K-12 classrooms or college/university use, as opposed to general audience programming with educational value). The intended recipients of this instructional programming are K-12 students or post-secondary students and adult learners enrolled in telecourses at colleges and universities. For example, the University of Houston, licensee of public television station KUHT, Houston, Texas, produces its own instructional programming and broadcasts three to four hours each evening six days per week during the fall, spring and summer semesters. This programming is broadcast to students enrolled in the University of Houston.

Therefore, as with ITFS, public television's instructional programming is broadcast for students in connection with a specific educational institution and not intended for reception by the general public. The fact that different

frequency bands are used to transmit ITV and ITFS programming does not justify different captioning obligations. Further, like ITFS, public television instructional programming broadcast in connection with educational institutions is covered by other federal laws that require the accommodation of disabilities on a more individualized basis.²

The Commission's belief that the economic burden of captioning local instructional programming will be relieved through other exemptions, including the exemption for local programming or the general revenue exemption, is problematic. While some public television station licensees producing and broadcasting instructional programming may fall within the parameters of the revenue exemption, many others will not.³ Further, the local production exemption will not apply to most of this instructional programming. Instructional programming has repeat value, and therefore does not comply with the local production exemption which requires no repeat value.

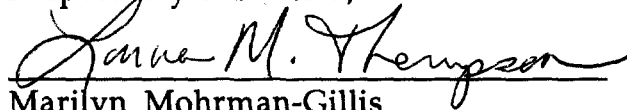
² These laws include Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794; Title II, Sections 201-205 of the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12131-12134; and Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq.*

³ For example, station KUHT, which produces instructional programming for the University of Houston students, discussed above, will not fall within the financial exemption.

Conclusion

Public television continues to be dedicated to its mission of equal access to its programming and services by all people. However, financial constraints often impede public television stations' ability to provide closed captioning. Therefore, APTS requests that the Commission balance the needs for captioning against the economic realities of public television funding, and establish the very limited exemption for instructional programming requested in this petition.

Respectfully submitted,



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October 16, 1997